

**AMENDMENT NO. 1 TO THE
WILDERNESS HEIGHTS
CONDITIONAL ANNEXATION AND ZONING AGREEMENT**

This Amendment No. 1 to the Wilderness Heights Conditional Annexation and Zoning Agreement ("Amendment No. 1") is made and entered into this ____ day of _____, 2013, by and between **LINCOLN FEDERAL BANCORP**, a federal corporation, hereinafter referred to as "Owner," and the **CITY OF LINCOLN, NEBRASKA**, a municipal corporation, hereinafter referred to as "City."

RECITALS

A. The parties previously entered the Wilderness Heights Conditional Annexation and Zoning Agreement dated December 17, 2008. The agreement provided for the City to annex approximately 153 acres, more or less, of land generally located on the east side of South 40th Street and south of Yankee Hill Road to be rezoned from AG Agriculture District to B-2 Planned Neighborhood Business District under an overlay Planned Unit Development District with a Development Plan for Wilderness Heights to allow approximately 309 residential dwelling units and 250,000 square feet of commercial floor area.

B. The Agreement further required the Owner to make certain Arterial Street Impact Fee Facility Improvements to South 40th Street from Yankee Hill Road to Willow Road which, at the City's discretion, could be completed in one or more phases as part of a final plat. In addition, the Agreement provided that no certificate of occupancy in the Phase II Commercial Area of Wilderness Heights will be issued until South 40th Street has been constructed as a four-lane urban road.

C. The parties agree that the Agreement is ambiguous as to what constitutes the Phase I and Phase II Commercial Areas of Wilderness Heights.

D. Owner is now proposing to final plat and identify the Phase I Commercial Area of Wilderness Heights as that portion of the B-2 zoned property lying south of Yankee Hill Road and north of Hohensee.

E. The parties desire to clarify the requirements for the timing and construction of site-related improvements to Yankee Hill Road, South 40th Street and Hohensee, and the Arterial Street Impact Fee Facility Improvements to South 40th Street under the Conditional Annexation and Zoning Agreement to accommodate development in the Phase I and Phase II Commercial Areas.

NOW, THEREFORE, in consideration of the above Recitals and the mutual covenants and condition below, the parties agree as follows:

1. That **Recital B** be amended to read as follows:

"B. Owner has requested the City to approve a change of zone from AG Agriculture District to B-2 Planned Neighborhood Business District designated as an overlay Planned Unit Development District with a Development Plan for Wilderness Heights that proposed modifications to the Zoning Ordinance to allow approximately 309 residential dwelling units and 250,000 square feet of commercial floor area. The 250,000 square feet of commercial floor area is intended to be developed in two phases (Phase I Commercial Area and Phase II Commercial Area). The Phase I Commercial Area shall consist of the B-2 zoned area located north of Hohensee. The Phase II Commercial Area shall consist of the B-2 zoned area located south of Hohensee. The City has also been requested by the developers of Wilderness Commons to approve a Change of Zone from AG Agriculture District to B-2 Planned Neighborhood Business District and R-5 Residential District designated as an Overlay Planned Unit Development District with a Development Plan for Wilderness Commons that proposes modifications to the Zoning Ordinance and Land Subdivision Ordinance to approve approximately 300 dwelling units in the underlying R-5 zoned area and approximately 600,000 square feet of office/retail floor area in the underlying B-2 zoned area."

2. That **paragraph 3. 40th Street** be amended to read as follows:

3. **40th Street.**

A. South 40th Street from Yankee Hill Road to Rokeby Road is presently a two-lane rural section roadway. Such section of South 40th Street is shown in the Lincoln City-Lancaster County Comprehensive Plan to be constructed as an arterial street during the 25-year planning period with four lanes plus turn lanes.

1. Phase I Commercial Area. As part of the final platting of the Phase I Commercial Area, Owner agrees at Owner's own cost and expense, without any reimbursement, to make the following site-related street improvements under the City's executive Order construction process: (i) construct temporary right- and left-turn lanes in South 40th Street at Hohensee;

(ii) construct temporary right- and left-turn lanes in Yankee Hill Road at the driveway entrance into the Phase I Commercial Area; and (iii) construct that portion of Hohensee within the final plat of the Phase I Commercial Area as a local street. Hohensee shall be further extended at the time of final platting the residential area to the east and/or the Phase II Commercial Center as appropriate.

2. Phase II Commercial Area. Owner agrees at its expense, subject to reimbursement as provided in subparagraph B below, to design, grade and construct that portion of South 40th Street from Yankee Hill Road south to Willow Road then tapering back to the two-lane rural roadway section past the first drainage structure as shown on Exhibit C attached hereto and incorporated herein by reference, through the City's executive order construction process. The box culvert shown on Exhibit C shall be constructed by Owner at the City's cost and expense. The City agrees to subsidize the construction of the culvert extension and shall repay Owner the contract cost to build the culvert as a subsidy to the paving executive order project for the South 40th Street Impact Fee Facility Improvements. The subsidy shall be paid upon acceptance of the construction project by Public Works. The design, grading and construction are required to be in accordance with City standards and specifications and subject to approval of the Director Public Works and Utilities. Left and right turn lanes will shall be provided at all intersections of public and private streets. The City may, at its discretion, allow the construction to be completed in one or more phases as part of the final plat process. In the event the City requires the taper back to the two-lane roadway section to extend beyond the first drainage structure as shown on Exhibit C, any additional cost incurred by Owner to construct such additional improvements shall be paid by the City.

3. That **paragraph 5.B.** be amended to read as follows:

B. ~~Certificates of Occupancy Final Plat.~~ No certificate of occupancy in the Phase II final plats for the Phase II Commercial Area of Wilderness Heights will be issued until South 40th Street has been constructed as a four-lane urban road as provided in paragraph 3.B. above.

4. That a new paragraph 5.C. be added to read as follows:

C. Residential Final Plats. As part of the final platting of the residential portion of Wilderness Heights, Owner agrees at Owner's own cost and expense to construct left-turn lanes and right-turn lanes in Yankee Hill Road at all intersections of public streets and private roadways.

5. That all other terms and conditions of the Conditional Annexation and Zoning Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first written above.

ATTEST:

CITY OF LINCOLN, NEBRASKA,
a municipal corporation

City Clerk

By: _____
Chris Beutler, Mayor of Lincoln

LINCOLN FEDERAL BANCORP, INC.
a federal corporation

By: 
Leo J. Schumacher, President

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this ____ day of _____, 2013, by Chris Beutler, Mayor of the City of Lincoln, Nebraska, a municipal corporation.

Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 3rd day of July, 2013, by Leo J. Schumacher, President of **Lincoln Federal Bancorp, Inc.**, a federal corporation, on behalf of said corporation.

Shelly L. Simonson
Notary Public

